19 52.

File No. O. Preventive Detention/52
Legal Department

A **BRANCH**

Subject:—

Opinions under the Preventive Detention Act, 1950.

File No. O. Preventive Detention

Gen. 194 a.

C O N T E N T S.

Legal Department File No. C. Preventive Detention /52.

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Rele.K.s.

C O N T E N T S.

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Rele.M.S.

C O N T E N T S.

Legal Department File No. O. Preventive Detention/52.

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Rele. M.S.

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Rele. M.S.

OFFICE OF THE R.L.A.

The attention of the government leader, High Court has already been drawn to section 21A and to its retrospective effect. No further action is necessary on this case. When another case of a similar type comes up again before the High Court, specific instructions regarding the operation of section 21A will, if necessary, be given.

Id/-
31/12.
Memorandum of Legal Affairs.

U.R. to H.D.(Poll.) No.11, dated the 2nd January 1952.

MSR.
21/6.

Office of the R.L.A.

The law does not prescribe any form in which the grounds are to be communicated to the detenue but as the Government in the Home Department has advised the District Magistrates and the Commissioner of Police, Bombay, to use a particular form, it is desirable to have the form as specific as possible.

14/-
20/2
Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.),No.201-ConfF., dated the 22nd February 1952.

MSR.
21/6.

No. 3731
Legal Department,
Bombay Castle,
10th March 1952.

To
The Government Pleader,
High Court, Bombay.

Sir,

I am directed to invite your attention to the judgment of the Bombay High Court dated the 11th December 1951 in Criminal Application No.1194 of 1951 (under article 226 of the Constitution) in the case of State v. Mrs. Godavari S. Parulekar, a copy of which has been forwarded by you to the Legal Department.

In that judgment dealing with the question of the arrest of Mrs. Parulekar without a warrant purported to have been made under section 54(1) thirdly of the Criminal Procedure Code, Their Lordships have made certain observations relating to proclaimed offenders. I am directed to invite your attention to the accompanying note which discusses the position in law with reference to the observations made by Their Lordships regarding proclaimed offenders and to inquire from you whether the construction of section 87 of the Criminal Procedure Code as based ~~xx~~ on its wording and on the wording of section 88 and as placed on it by the High Court of Oudh was brought to the notice of Their Lordships of the Bombay High Court.

Yours faithfully,

Id/-
Secretary to the Govt. of Bombay,
Legal Department.

MSR. 21/6.

Note.

Mrs. Godavari S. Parulekar had absconded after a detention order was issued against her. Section 6 of the Preventive Detention Act, 1950, gives the Government or the officer making the Detention Order certain powers relating to such an absconder. Those powers in brief are :-

(a) making a report in writing of the fact to the specified Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such an Officer at a specified place and within a specified time.

If a direction is made as contemplated by clause (b) of section 6 and the offender does not appear or explain his non-appearance he is liable to be convicted and sentenced for his failure to appear. If a report is made as contemplated by clause (a) the provisions of sections 87, 88 and 89 of the Criminal Procedure Code apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate.

Sections 87, 88 and 89 relate to proclamation and attachment. Section 87 provides for the issuing of a proclamation for the person absconding; section 88 for the attachment of his property; and section 89 for the restoration of the attached property. We are not, in the present case, concerned with sections 88 and 89. Under section 87, the Court on being satisfied that a person has absconded "may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation." The section then provides for the method of publishing that proclamation and for the manner

of its proof. It is only after such a proclamation has been made and published that the property - movable or immovable or both - belonging to the proclaimed person can be attached under section 88.

Now, in the case of Mrs. Parulekar a direction was issued as contemplated by clause (b) but no report in writing as contemplated by clause (a) was made. Therefore, sections 87, 88 and 89 did not apply and Mrs. Parulekar could not be said to be a 'proclaimed person'. On that ground alone the arrest of Mrs. Parulekar without a warrant would be bad and cannot be saved by section 54(1) thirdly of the Criminal Procedure Code which provides that any police officer may without an order from a Magistrate or without a warrant arrest any person who has been proclaimed as an offender either under this (Criminal Procedure Code) Code or by order of the State Government.

The Bombay High Court, however, proceeded to observe (and these observations are obiter) that:

(1) the Code itself does not permit persons to be proclaimed as offenders;

(2) although there is no definition of the words 'proclaimed offender' in the general definition clauses, there is a definition of that phrase in section 45(2)(ii) Criminal Procedure Code and it must be taken that in section 54 the words 'proclaimed offender' are used in the same sense in which the term has been defined in section 45(2)(ii); and

(3) therefore, whenever any person is to be proclaimed as an offender what has got to be proclaimed is that he is an offender in respect of the act which if committed in British India is punishable under one of the sections of the Indian Penal Code mentioned in section 45(2)(ii) of the Criminal Procedure Code.

These observations appear to be contrary to the wording of the relevant sections and the decisions of other High Courts. Section 45(2)(ii) does not define the words 'proclaimed offender' but only gives an inclusive meaning of it. Reference may be made to the observations of Knox J. of the Allahabad High Court in Queen Empress v. Narapt Singh (1901 Allahabad Weekly Notes, 10) reproduced in Emperor v. Ram Sarup (39 Criminal Law Journal 154 at p.155). The learned Judge says:

> "It would appear from the latter part of his (the Sessions Judge's) judgment that he came to the conclusion that the explanation attached to s.45 of the Code of Criminal Procedure was an exhaustive definition of the word 'proclaimed offender.' It is rather difficult to understand how he could have fallen into this error. The words contained in that part of the section are 'the expression proclaimed offender includes any person proclaimed as an offender, etc.' The use of the word 'includes' should at once have pointed out to the learned Judge that the persons included in the expression are persons over and above those to whom the words in their ordinary signification applied, and who might , but for this explanation, have escaped out of the category of 'proclaimed offenders.' When a definition is intended to be exhaustive, the Legislature, as a rule, uses the word 'means' and not the word 'includes'."

Therefore, the words 'proclaimed as an offender' used in section 54 must be construed independently of section 45(2)(ii). The only section in the Code which indicates when a person becomes a proclaimed offender is section 87; and this is further apparent from the use of the

word 'the proclaimed person' in section 88. The person who is proclaimed as an offender is the person in respect of whom a written proclamation is made and published in the manner ~~xxx~~ provided by section 87. Section 87, therefore, is the section which permits persons to be proclaimed as 'offenders' and the persons who are so proclaimed can be called such proclaimed offenders as are covered by section 54(1) thirdly. This has been the construction placed on section 87 by the Madras High Court and the Oudh Chief Court in In Re Pandya (7 Madras 456) and Emperor v. Ram Sarup (37 Criminal Law Journal p. 154) respectively. In the oudh case it is observed that "if a proclamation has been made in respect of an accused person under section 87 of the Code of Criminal Procedure, it is sufficeint to constitute him ' a proclaimed offender ' under section 45 of the Code. "

MSR.
21/6.

No. 2206

Office of the
Government Pleader, High Court,
Bombay, 15th March 1952.

From
Shri H.M. Chokai, B.A.(Hons), LL.B.,
Government Pleader, High Court,

To
The Secretary to Government,
Legal Department,
Bombay,

Subject: Criminal Application No. 1194 of 1952 - State Vs. Mrs. Godavari S. Parulekar

Sir,

I have the honour to acknowledge receipt of your letter No. 3731 dated the 10th March 1952.

The question which arose for decision was whether the arrest of Mrs. Godavari Parulekar was legal. As she was proclaimed as absconder it was urged that her arrest was under Section 54 of the Criminal Procedure Code. Therefore it became necessary to inquire whether she was a proclaimed offender either under the Code or under any orders of the Provincial Government. Definition of "proclaimed offender" as given in Section 45 was pointed out and it was also pointed out that it was not "exhaustive" definition but "inclusive". Section 87 of the Criminal Procedure Code refers to a person being "proclaimed offender" by a Court. In the present case Mrs. Godavari S. Parulekar was declared as absconder under Section 6 clause (b) Preventive

Detention Act. No steps were taken to comply with the provisions of Section 6 clause 'a' of the Preventive Detention Act 1950. That being so neither Section 87, 88 or 89 applied to the facts of the case.

In that view Section 54 also was held to be not applicable, since there was no other enactment under which it could be pointed out that in respect of a person absconding and in respect of whom proclamation is issued under Section 6-b of the Preventive Detention Act arrest without warrant could be effected.

Exhaustive arguments were submitted to the Court. The Court was not taken into authorities since from the facts of the case neither section 87, 88, or 89 applied.

It may however be noted that the learned Judge carefully repeats the definition given in Section 45 and is aware of the fact that it is the definition which is "inclusive" and not "exhaustive".

I shall make use of your Note on a future -- occassion if any question falling within Section 87 etc., Criminal Procedure Code arises.

Yours faithfully,

Id/-

Government Pleader, High Court,

MSR.
21/6.

Office of the R.L.A.

The Home Department has proposed an amendment either of the Preventive Detention Act or of the Criminal Procedure Code to meet with the difficulty of proclaiming an offender which was pointed out by the Bombay High Court. That difficulty does not really exist, because, section 87, as pointed out in the accompanying note is an answer. Besides, as section 6(a) of the Preventive Detention Act makes section 87 of the Criminal Procedure Code applicable, it thereby lays down the manner in which a proclamation against an absconding detenue can be issued and published and therefore, it will not be legal to provide for a different method of proclaiming such a person. A copy of this Department's letter to the Government Pleader, High Court, No. 3731 dated the 10th March 1952, and his reply thereto are appended herewith for information.

Id/-
22/3.
Remembrancer of Legal Affairs.

U.R. to H.D.No.282-Confl., dated the 22nd March 1952.

MSR.
21/6.

Office of the R.L.A.

Attention is invited to R.L.A's opinion No. 370-Confl., dated the 16th April 1952. As observed by the R.L.A. therein if the detention is made merely as a cloak for a collateral purpose and particularly for the purpose of denying the person detained the statutory rights and privileges which he would get as an accused person under the Code of Criminal Procedure, the detention would be held bad. Otherwise, there should be no objection to commencing a prosecution against the detained person or to detain a person who is being prosecuted for an offence.

Id/-
6/5
Remembrancer of Legal Affairs.

U.R. to H.D. No. 7193, dated the 7th May 1952.

Mar.
21/6.

Office of the R.L.A.

It is true that in R.L.A's Opinion No. 203-Confl dated the 25th March 1950, it has been held that action under clauses (a) and (b) of section 6 of the Preventive Detention Act cannot be taken simultaneously and in giving his opinion No. 282-Confl. dated the 22nd March 1952, it was not intended to overrule this previous opinion. It was only pointed out therein that as the Preventive Detention Act makes a specific provision in section 6(a) for making section 87 of the Criminal Procedure Code applicable to an absconding detenue, it would not be necessary to take additional power. If, however, Government desires to avail itself of an additional power in respect of detenues against whom action is taken under section 6(b) an amendment would be necessary and that can be conveniently made in the Preventive Detention Act itself. Government have already informed the Government of India in this matter under their letter No. S.D. 1042(N)/1952, dated 29th April 1952 (which was drafted in consultation with R.L.A) andthe points raised in this file are thus already disposed of.

Id/-
6/5.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 422-Confl., dated 7th May 1952.

MSR.
21/6.

Office of the R.L.A.

The short question that arises for consideratio is whether a prosecution which is already pending can be continued when an order of detention under the Preventive Detention Act, 1950 is made against the accused. In Govt. Circular, Home Department, No. S.D. II/671-V/4403, dated the 13th April 1950, instructions have been issued that all pending prosecutions should be withdrawn as soon as a detention order is made. Shri Wassoodew, however, considers that these instructions are not sound and he would prefer that the pending prosecution should be stayed till the Advisory Board's view on the detention are available. This he considers to be a safer course; but H.D. does not agree with his views and accordingly the question abov referred to is referred to R.L.A.

2. Attention is invited to R.L.A's opinion No. 769-Confl., dated 3rd August 1951, where the same question has been considered. This point has been also considered in several decisions which have been recently reported. A succinct and correct statement of the position is that made by Jagannadhadas J. It is as follows:-

> "I would therefore hesitate to accept as correct the broad proposition sought to be laid down in those cases that the power of detention cannot be exercised as against a person who is being prosecuted on the same facts which constitute the grounds of the detention and that an order of detention in such cases without making a choice between the two courses is ipso facto and without more, an abuse of the power of detention."

In short, therefore, it is all a question of bona fides of the detention. If the detention be made merely as a cloak for a collateral purpose and particularly for the purpose of denying the person detained the statutory rights and privileges which he would get as an accused person under the Code of Criminal Procedure, the detention would be held bad. Otherwise, there should be no objection to commencing a prosecution against the de-tained person or to detain a person who is being prosecuted for an offence.

3. On the whole, therefore, the course suggested by Shri Wassoodew is preferable and should be adopted.

Id/-
15/4
Remembrancer of Legal Affairs.

U.R. to H.D. No.370-Confl., dated the 16th April 1952.

MSR.
21/6.

OFFICE OF THE R.L.A.

Recovery of Penalty under a bond :

Preventive Detention Act, 1950, - section 14(5).

The view taken by the District Magistrate that section 514 of the Criminal Procedure Code will not apply to the present case is correct. Sub-section (5) of section 14 of the Preventive Detention Act empowers Government to forfeit the bond and further enacts that any person bound thereby shall be liable to pay the penalty thereof. This section, however, does not make the provisions of section 514 applicable on such forfeiture and in the circumstances action under section 514, Criminal Procedure Code would not be feasible (see In re Hubert Crawford, 20 Bom. L.R.879). The only remedy would be by way of a suit. To avoid the difficulty in the future, the Government of India may be approached for making section 514 applicable to the bonds under the Preventive Detention Act by a suitable amendment of the Act, or in the alternative, provision may be made in the bond for recovery of the penalty as an arrear of land revenue.

YA/-
13/5
Remembrancer of Legal Affairs.

U.R. to H.D.No.439-Confl., dated the 13th May 1952.

MSR.
21/6.

Office of the R.L.A.

The R.L.A. had a conference with the Government Pleader, High Court, yesterday and it has been decided that the detention order made against Shri Motilal Ratanji should not be be cancelled straightway but that the Government Pleader, High Court, should examine the grounds furnished to the said detenu in the light of the decision of the Supreme Court in Atmaram Vaidya's case and contest the petition, at the same time bringing to the notice of the High Court the fact that the detenu Motilal Ratanji while on bail has engaged himself in prejudicial activities; that when the Government moved the High Court for cancellation of the Bail on that ground, the application for cancellation of bail proved unsuccessful as the bail bond did not contain a condition of good behaviour; and that Government could not also take further steps against the detenu because being on bail he was in constructive custody of the Court.

Id/-

4/6.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 515-Confl., dated the 5th June 1952.

MSR.
21/6.

Office of the R.L.A.

The Remembrancer of Legal Affairs discussed this matter with the Government Pleader, High Court, who saw him on Saturday and as a result of that discussion it was decided that no affidavit of Shri Jagjitsingh is now necessary but an affidavit of the present District Magistrate, Thana, will be necessary to the effect that he had examined the record of the case of this detenue and having taken the existing circumstances and local conditions into consideration he was satisfied that the continuance of the detention of this detenue was necessary and the release of the detenue would be prejudicial to the security of the State and the maintenance of public order.

Id/-
16/6
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 563-Confl., dated the 17th June 1952.

MSR.
21/6.

Office of the R.L.A.

In this case, at the time and long before the detention order was passed on 19th March 1950, the detenue was not within the jurisdiction of the District Magistrate who passed the order. Therefore under the Preventive Detention Act, 1950, as it stood before the amendments by Act IV of 1951, the detention order was bad. On that ground alone the prosecution should have failed. Even on merits, this was a weak case for the prosecution for the reasons given in the opinion of the Assistant Government Pleader, Ahmednagar. This is therefore not a fit case for an appeal.

Id/-
21/6.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 592-Confl., dated the
23rd June 1952.

HSR.
21/6.

Office of the R.L.A.

Sub-sections (1) and (2) of section 14 of the Preventive Detention Act, 1950, have nothing to do with the manner in which the forfeited bond is to be enforced. The provision in the bond that the penalty shall be recoverable as an arrear of land revenue relates to the manner of its enforcement. It is not a condition of the detenue's release but is a term of contract with Government within the meaning of section 187 of the Bombay Land Revenue Code.

Id/-
12/7.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 675-Confl., dated the
14th July 1952.

MSR.
21/6.

Office of the R.L.A.

The view taken by Secretary, Home Department is correct. It is not necessary to name the opponents because disclosure of their names may lead to their harassment at the hands of the associates of the detenu; and the District Magistrate would be within his rights in not disclosing them for this reason. (see also section 7(2) of the Preventive Detention Act and the High Court Judgment in Hasina Bibi v. State; Criminal Application No. 398 of 1952). In grounds (2) and (3), however, the District Magistrate has omitted to mention the names of associates of the detenu except one associate. The District Magistrate may disclose their names as he proposes to do now so as to impart the precision by supplying this particular. The Ground No. (1) is also very vague. That ground is "you have been carrying on activities inciting to violence". Unless the activities so referred to are no others than the speeches to which reference is made in that ground, the ground would be vague as it does not specify the place where the activities are carried on, the people who are incited and the nature of the activities. In the absence of these particulars, the Court is likely to hold the ground vague. (See In re Pandurang Govind Phatak, 50 Bom. L.R. 446; and In re Mandekar, 50,Bom.L.R. 590). The District Magistrate should, therefore, communicate further particulars to the detenu as indicated above and on such particulars being supplied, it would be possible to defend the District Magistrate's action on the principle laid down in Atma Ram Vaidya's case.

Id/-
11/6
Remembrancer of Legal Affairs.

U.R. to H.D. No. 531- Confl., dated the 11th June 1952.

MSB.
21/6.

Office of the R.L.A.

Neither section 4 nor any other provision of the Preventive Detention Act requires that the ~~xxxx~~ order should be 'served' upon the detenu, much less in the manner prescribed for the service of processes. So long as it is explained to the detenu, (and an endorsement to that effect is made for purposes of record) the order can be executed.

Id/-
6/6.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 521-Confl., dated the
6th June 1952.

MSR.
21/6.

Office of the R.L.A.

In ground No.1 it would have been desirable to mention specifically the nature of the threats held out by the detenues to the employees and workers of the company. The defect may, however, be remedied by supplying further particulars, if so desired. In the 2nd and the 3rd grounds, the Commissioner has used the words "contemplating acts of violence, sabotage etc." Under the Preventive Detention Act, it is no doubt possible to take action when there is a reasonable probability of the person, against whom an order is sought to be made, acting in a prejudicial manner. (See In re. S.V. Ghate, 52 Bom. L.R. 711). But mere contemplation would not be sufficient. To contemplate means "to have in view as contingent or probable or as an end or intention; to purpose or intend" (see Webster's New International Dictionary p. 574). Contemplation does not suggest probability of acting and mere contemplation may not be sufficient for the purpose of the Preventive Detention Act. Here too we can improve the position by giving particulars, if any be available, by way of concrete steps implicit in 'contemplation'.

Id/-

2/7.

Remembrancer of Legal Affairs.

U.R. to H.D., No.631-Confl., dated the

3rd July 1952.

MSR.
21/6.

Office of the R.L.A.

The questions for R.L.A's consideration are:

(1) Whether in view of the newly inserted sub-section (3) in section 8 of the Preventive Detention Act, 1950, it is necessary for Government to ~~xx~~ constitute a new Advisory Board or whether mere notification of Shri Wassoodew as Chairman will be sufficient; and

(2) Whether, in view of the new provisions of section 9 of the Act, cases of detention were detention took place before 29-9-1952 will have to be referred to the Board within thirty days from the date of detention.

2. The provision for the constitution of an Advisory Board was already in existence in the Preventive Detention Act, 1950. The new Amending Act merely provides for appointment of a Chairman of the Boards. The new sub-sectio (3) in section 8 enacts:

> "The appropriate Government shall appoint one of th members of the Advisory Board who is or has been a Judge of a High Court to be its Chairman."

It is clear from the terms of this sub-section that the sub-section does not contemplate setting up of a new Advisory Board but merely provides for appointment of a chairman thereof. In the circumstances, it is not necessar to set up a new Board. Notification of Shri Wassoodew as Chairman will suffice.

3. As regards question (2), the view taken by Secretar Home Department, is correct. Section 9 as now substituted in effect requires that all detention orders which are in existence on the date ~~xxx~~ that section came into force and whic have not already been placed before the Advisory Board mus be so placed before the Board within the period of thirty days from the date ~~xxx~~ of such orders.

Id/-
18/9.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 947/A- (contd) dated 19th Sept - 52

Office of the R.L.A.

The Home Department view that it is permissible to keep a person in detention for a period not exceeding three months without reference to the Advisory Board is correct. Article 22(4) of the Constitution only prescribes the maximum duration of preventive detention without the report of an Advisory Board. It must be read along with the law which fixes the duration at less than this maximum or which makes reference to the Advisory Board compulsory. Under section 9 of the Preventive Detention Act, 1950, as amended, a reference to the Advisory Board shall be made within 30 days of the date of detention. Under section 10 of the Advisory Board shall submit its report within ten weeks from the date of detention. These provisions are mandatroy and any detention in contravention of these provisions would be illegal.

Sd/-

3/4.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 1012/A-Confl., dated the 4th October 1952.

MSR.

Office of the R.L.A.

The right to be heard in person is conferred under section 10 of the Preventive Detention Act when the case is before the Advisory Board. Section 9 determines what cases should be referred to the Advisory Board. Attention is invited to R.L.A's opinion No.946/A-Confl. dated 19th September 1952. It would seem from a plain reading of section 9 that a case which was already refferred to the Advisory Board and which is, therefore, not covered by R.L.A's opinion quoted above, is not to be placed before the Board. The question of the detenus' exercising their right to appear in person would not, therefore, arise.

2. It may be advisable to consult the Government of India whether it was intended that cases of detenus already heard and confirmed by the Board were to be placed before the Board a second time.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D. No. No.1073/A-Confl. dated 15th October 1952.

MSR.
22/6.

Office of the R.L.A.

The questions raised by the Home Department have been considered in the State of Bombay v. Atmaram Shridhar Vaidya, 55 Bom.L.R. 437; and more recently by the Bombay High Court in P.J. John v. State of Bombay. In view of these decisions the observations of Bavdekar and Vyas JJ. in the earlier decision may be deemed to be over-ruled.

Sd/-
12/11.
Remembrancer of Legal Affairs.

U.R. to H.D.,No. 18967/A , dated the
14th November 1952.

MSR.
22/6.

Office of the R.L.A.

The members of the Board having studied the cases before the cases were withdrawn, they would be entitled to the fees of Rs. 40-8-0 in respect of each detenue. The Government Resolution dated 10th October 1952 in respect of the fees does not make the payment conditional on a report being submitted.

Id/-
25/11.
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No.1804/A-Confl., dated the 26th November 1952.

MSR.
22/6.

Office of the R.L.A.

It appears from the record that this detenu has three previous convictions (see p.11/C). If that be so, the police must have had in their possession a complete record about the details of his name. It is not quite clear whether the police accept the position that his surname is 'Kharkar' and not 'Arkar'. A report on that point may, therefore, be called from the Commissioner of Police. It may be added that the recital in the confirmation order that this person was detained originally as 'Kharkar' and his real surname is 'Arkar' may provide ground for an application for habeas corpus on the contention that the confusion of surnames shows that the detaining authority has not cared to apply his mind to the case.

Id/-
5/12.
Remembrancer of Legal Affairs.

U.R. to H.D. No.1354/A-Confl., dated the
5th December 1952.

MSR.
22/6.

Office of the R.L.A.

Preventive Detention Act, 1950 - Supply of particulars.

These papers are referred to R.L.A. for advice on the points raised in H.D. (Spl.) note dated 11th October 1952. The note raises two questions:

(1) Whether the practice of furnishing further particulars can be discontinued in view of the High Court decision in P.J. John v. State; and

(2) Whether the present practice followed by the detaining authorities in stating in the first notice of grounds of detention that it is not in public interest to disclose further facts requires review.

2. The decision in P.J. John v. State does not warrant discontinuance of the practice of supplying particulars. The whole question of supplying particulars has been considered in State of Bombay v. Atmaram Shridhar Vaidya, A.I.R. 1951, S.C. 157 to which attention is invited. As observed by Kania C.J. "the object of furnishing grounds for the order of detention is to enable the detenue to make a representation, i.e. to give him an opportunity to put forth his objections against the order of detention. Moreover, "the earliest opportunity" has to be given to him to do that. While the grounds of detention are thus the main factors on which the subjective decision of Government is based, other materials on which the conclusions in the grounds are founded could and should equally be conveyed to the detained person to enable him to make out his objections against the order. To put it in other words, the detaining authority has made its decision and passed its order. The detained person is then given an opportunity to urge his objections

which in cases of preventive detention comes always at a later stage. The grounds may have been considered sufficient by the Government to pass its judgment. But to enable the detained person to make his representation against the ~~mf~~ order further details may be furnished to him. In our opinion, this appears to be the true measure of the procedural rights of the detained person under Art. 22(5)". Further particulars are thus essential and they should normally be furnished to the detenue except in exceptional cases where this cannot be done on account of injury to public interest.

3. In view of the position stated above, the practice of informing the detenue in a routine manner at the time of communication of grounds that further particulars could not be disclosed may be discontinued. Such a clause can only be added when the detaining authority has come to a conclusion, after weighing all the factors, that it is really not in the public interest to disclose further facts and not otherwise (cf. R.L.A.'s opinion No.675-Confl dated 6-9-1950).

Id/-
6/12,
Remembrancer of Legal Affairs.

U.R. to H.D. No.1356/A-Confl., dated the 8th December 1952

MSR.
22/6.

Office of the R.L.A.

From the reply of the Commissioner of Police and the Memo. accompanying it it will be appear that in all the three previous convictions the man has been described as "Kison Dashrath". There would therefore be no objection in describing him in the confirmation order as "Kison Dashrath".

Id/-
12/12.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 1383/A-Confl., dated the 13th December 1952.

MSR.
22/6.

Office of the R.L.A.

The points on which R.L.A's advice has been sought have not been precisely stated. If they arise in connection with the question considered in paragraph 3 of the Home Department note, attention is invited to the Government Circular, Home Department (Political), No.S.D.1202, dated the 15th May 1952, wherein it is laid down that "no person should be arrested for the purposes of detention before the requisite order of detention is made". In that circular Government have also directed how cases where the prospective detenue is likely to abscond are to be dealt with; but as advised in that circular that procedure is to be followed in exceptional circumstances only. The ordinary rule would, therefore, be that there should be no arrest before the detention order is made. The District Magistrate may be informed of this position. In view of this the other points discussed in paragraph 3 of the Home Department note do not fall for consideration.

2. The Home Department is right in its view that detention should not be resorted to in cases of this type.

Id/-
24/12.
Remembrancer of Legal Affairs.

U.R. to H.D., No.1446/A-Confl., dated the 26th December 1952.

MSR.
22/6.

Office of the R.L.A.

The members of the Board having studied the cases before the cases were withdrawn, they would be entitled to the fees of Rs. 40-8-0 in respect of each detenue. The Government Resolution dated 10th October 1952 in respect of the fees does not make the payment conditional on a report being submitted.

Id/-
25/11.
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No.1804/A-Confl., dated the 26th November 1952.

MSR.
22/6.